Supreme Court, U.S.
FILED
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CLERK

(3)

No. 01-1016

In the

Supreme Court of the United States

IVAN KERR,

Petitioner,

v.

RONNIE COHEN, a/k/a RONALD ALAN COHEN, RONALD ALLEN COHEN, R. ALLEN COHEN,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the State of Georgia

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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8PP

QUESTION PRESENTED

I. **WHETHER THE FEDERAL QUESTION WAS PROPERLY AND TIMELY PRESENTED IN THE COURTS BELOW.**

II. **WHETHER THE FEDERAL QUESTION WAS IGNORED BY THE COURTS BELOW BECAUSE RESTITUTION WAS NOT ORDERED AT SENTENCING.**

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ARGUMENT

I. THE APPLICABLE FEDERAL LAW WAS PRESENTED IN PETITIONERS INITIAL MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY ON APRIL 24, 2000 AND SUBSEQUENTLY. APPENDIX A, PP. 2, 3.

Said Motion was denied on March 2, 2000. Pet. App. A. at 1a. Title 18 U. S. C. 3664 (l) was presented again by reference in Appellant's Response to Defendant's Motion for Summary Judgment on September 21, 2000, Pet. App. B at 3a, by reference in Appellant's Brief to the Georgia Court of Appeals on January 26, 2000 Pet. App. D at 11a, in Appellant's Response Brief to the Court of Appeals on February 26, 2001, Pet. App. E at 15a, and in Appellant's Motion for Reconsideration on April 18, 2001, Pet. App. G at 32a.

It is never mentioned by the Georgia Courts.

II. THE FAILURE OF THE GEORGIA COURTS TO TREAT THE FEDERAL QUESTION AT ALL IS THAT WHICH IS COMPLAINED OF.

Sentence was imposed upon Cohen on April 25, 2001, Resp. Brief, App. C at App. 20, subsequent to all rulings of the Georgia Courts.

Further, the issue of restitution, albeit not ordered on that date, remains open, and mandates consideration, at least, by the Courts of Georgia. Pet. Brief, P. 12; Cohen Indictment, Count Two, Rsp. Brief, Ap. B, App. 16-18; Cohen Sentence, Resp. Brief, App. C, App. 25, citing sections of Title 18 U. S. C. § 3664.

United States Law is the law of Georgia. *Howlett by Howlett v. Rose*, 496 U. S. 356 (1990), as cited in Pet. Brief, P. 13.

CONCLUSION

Upon principles of law as well as equity, Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE SUPERIOR COURT
COUNTY OF THOMAS
STATE OF GEORGIA

IVAN KERR,	*	
Plaintiff,	*	
	*	**Civil Action No:**
vs.	*	**99-CV-1188**
	*	
RONNIE COHEN,	*	
a/k/a RONALD ALAN COHEN,		
RONALD ALLEN COHEN,	*	
RONALD COHEN,	*	
R. ALLAN COHEN.	*	
Defendant.	*	

BRIEF IN SUPPORT OF MOTION
FOR
SUMMARY JUDGMENT

A. STATEMENT OF FACTS

As a concise statement of facts, attached hereto as noted are:

1. Plaintiff's Complaint, verified under oath (Exhibit "A").

2. A copy of the Indictment of Defendant for Title 18 U. S. C. § 1343 Fraud by Wire, Radio, or Television (Exhibit "B"). A certified copy of said indictment is filed in Thomas County Civil Action # 99-CV-0249.

3. A copy of the transcript of the Defendant's Change

of Plea on January 21, 1999 in the United States District Court, Northern District of Florida, Gainesville Division. (Exhibit "C"). A certified copy of said transcript is filed in Thomas County Civil Action # 99-CV-0249.

B. ARGUMENT AND CITATION OF AUTHORITY

The fact situation here presented lends itself to Summary Judgment.

"A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." [O. C. G. A. § 9-11-56 (b)]

"A conviction of a Defendant for an offense involving the act giving rise to an order of restitution shall estop the Defendant from denying the essential allegations of that offense in any subsequent Federal proceeding or State Civil proceeding, to the extent consistent with State law, brought by a victim." [Title 18 U. S. C. § 3664 (l)]

This is no case of accident, or even negligence.

Plaintiff herein is merely attempting to retrieve his own property, the loss of which was effected by Defendant, gain enuring to Defendant and others in his criminal

organization. Contact with Defendant was direct, and damage was substantial.

Defendant's counterclaim is of no legal effect and contradicted by those verified pleadings and exhibits on file. Evidence already before the Court disproves the counterclaim, and the same should be summarily dismissed in the course of granting Summary Judgment for Plaintiff.

B. CONCLUSION

Summary Judgment for Plaintiff as to liability in this matter is consistent with Georgia law and justice.

Plaintiff is entitled to Summary Judgment as to liability, subject only to proof of damages when documentation is available.

Respectfully submitted,

/s/ Arthur J. Shelfer, Jr.

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